

SOUTH DELTA WATER AGENCY

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September 29, 2015

Via E-Mail bcnelson@usbr.gov

Mr. Ben Nelson
Bureau of Reclamation
Bay-Delta Office
801 I Street, Suite 140
Sacramento, CA 95814-2356

Re: Comments by South Delta Water Agency to DEIS for
Coordinated Long-Term Operation of the CVP and SWP

Dear Mr. Nelson:

The following are the comments of the South Delta Water Agency to the above-described EIS. The SDWA has from its inception been dealing with the Department of Water Resources and the U.S. Bureau of Reclamation with regard to their operations and the effects therefrom on the water quality, levels and circulation in the southern Delta. DWR and USBR (collectively "Projects") continue to undertake actions and emphasize exports to the detriment of southern Delta water users. Although the EIS is part of an overall effort to implement the fishery agencies Biological Opinions, the Projects should only be doing such in a manner that also complies with other state and federal law and that does not adversely impact third parties and senior water right holders.

For clarity, the implementation of the BO mandated actions are referred to as "the project" while DWR and USBR are referred to as "the Projects."

A. It is unclear how the EIS actually evaluates any proposed project in that the No-Action Alternative includes continued operations of the projects under the 2008 and 2009 BO's; the implementation of the BO's being the project. Thus, the comparisons between the No-Action and the preferred alternative (Alternative 2?) Are simply an examination over time of how operations and effects therefrom will change due to other factors and not due to the project. The EIS attempts to cure this by having Alternative 1, which for the most part is CVP and SWP operations without the BO's being implemented. The net result of this is an inability to actually evaluate the impacts of the project which of course means that any possible mitigation becomes elusive. The EIS is deficient because of this faulty construction of alternatives.

The EIS is also deficient because it includes alternatives which are contrary to existing law and the permits under which the CVP and SWP operate. For example, under Alternative 3 New Melones operations do not include any releases under D-1641 for either water quality on the San Joaquin River (or in the southern Delta?) or for fishery flows including the pulse flows.

Each of these requirements are current conditions of the USBR permits for New Melones. Although it might be arguable that the USBR could meet these requirements by other measures, the Alternative assumes other USBR operations remain consistent and thus preclude meeting the permit conditions. Other criteria/conditions in this and other proposals are similarly contrary to existing USBR and DWR obligations. There would seem to be no legal basis to evaluate alternatives which are directly contrary to existing permit conditions and would result in violations of water quality standards.

B. WATER QUALITY CHAPTER 6.

Chapter 6 of the EIS attempts to examine the effects of the project on water quality. However, in what appears to be an effort to hide any such effects, the EIS fails to separate out impacts by sources. All the Alternatives include climate change assumptions which are anticipated to impact water quality in the system overall. Alternatives which include the RPA's from the 2008 and 2009 BO's (all but Alternative 1) include such things as increased flows at some times in some places, increased Delta outflow at some times, and impacts to export rates. These changes will also impact water quality by affecting the amount of flows at other times and the storage which is needed to provide the flows when natural flow is insufficient. However, the EIS does not separate out the impacts of these two actions (project related and climate change related). Hence the public cannot discern what the impacts are from the BO's mandated actions as opposed to those from climate change assumptions. Thus the EIS is deficient in that it does not examine how project induced increased flows, increased Delta outflow or changes in export rates affect water quality.

For example, the analysis of Alternative 2 to the No-Action Alternative is described as being the same as the comparison of the No-Action Alternative to Alternative 1 (page 6-95). That analysis begins on page 6-85, section 6.4.3.1. In that section the EIS states that the San Joaquin River would have lower salinity during April and October, but higher in all other months. Such a conclusion is either wrong or misleading. In times when water quality is a function of "natural" and upstream (of the Stanislaus) flow, New Melones makes no releases to maintain Vernalis water quality. Thus, the impacts of the BO's would be insignificant or non-existent during those times. However, when existing flows are low or contain high concentrations of salts, New Melones makes releases to maintain the water quality standard at Vernalis according to its permits. When the standard is 0.7 EC, the USBR typically maintains somewhere near 0.6 EC at Vernalis. During such controlled release times, the river is of a "constant," artificially maintained quality. Would not the USBR still meet the same quality goal even if the project adversely affected the river's quality? Thus the project may have no effect on river water quality unless of course prior releases (under the BO's) or hydrologic conditions result in insufficient water in New Melones to comply with the permit condition. Whatever the situation, the EIS makes no apparent effort to show how the actions under the BO's will affect the ability of the USBR to meet the Vernalis requirement, and thus do not show how the project affects river quality.

As is typical in an environmental document produced by the USBR, there is only a small reference to the three interior southern Delta water quality standards; which standards are permit requirements of both DWR and USBR. These three standards have compliance measuring points at Brandt Bridge on the San Joaquin River, Old River at Middle River and Old River at Tracy Blvd. Bridge (see D-1641). The USBR and DWR are obligated to meet the water quality objectives (standards) for agricultural beneficial uses at these three locations, although the standards apply throughout the channels (see 2006 Bay-Delta WQCP). Historically, the USBR

and DWR have been unable to meet these standards on a regular basis and unwilling to undertake any actions to seek compliance or even improve water quality if not comply. Included herewith various printouts from the DWR Delta Ops webpage dealing with Delta water quality showing the instances of violations of the 0.7/1.0 EC standards in recent years, which exceedances are violations of the Projects' permits. The 0.7 applies from April through August and the 1.0 applies from September through March. There have been over 1000 violations in recent years.

The EIR makes no mention of how the project will affect water quality at the three interior southern Delta compliance points, only mentioning that "the standards are under review." Regardless of any such review, the failure to evaluate the project's impact on water quality at points for which DWR and USBR are obligated to meet certain standards makes the EIS deficient. However it gets worse.

In response to DWR notifying the SWRCB that it and USBR would not meet the 0.7 EC standard as of April 2005, the SWRCB conducted a Cease and Desist hearing against DWR and USBR. That proceeding resulted in Order WR 2006-0006, which ordered the Projects to "obviate" future violations. When the Projects were incapable of complying with that Order, a second or follow-on Cease and Desist hearing was conducted which resulted in WR 2010-0002 (included herewith). That Order, continued the mandate to "obviate" future violations, but assumed the consideration of new standards (i.e. relaxing the standards because DWR and USBR refused to meet the existing standards). The Projects were mandated to present a plan to meet the standards (or changed standards if such changes occurred) within "180 days" of the completion of a water right proceeding implementing any new standards. (WR 2010-0002 at page 21). However, the SWRCB gave itself until January 1, 2013 to complete a water rights proceeding following any change in the standards. Since this "drop-dead" deadline has expired, DWR and USBR are in violation of the CDO by not having come up with a plan to meet the interior southern Delta standards.

Thus, the EIS simply ignores not only that the Projects are obligated to meet these water quality standards, but that they are in violation of a Cease and Desist Order to have a plan to meet the standards. When the EIS assumes "continued operations" of the CVP, it is assuming a violations of permit conditions, water quality standards and the Clean Water Act and Porter Cologne Act (under which the SWRCB sets water quality standards. An EIS cannot assume such violations.

The failure to comply with law does not end there. In 2004 PL 108-361 (HR 2828, included herewith) was enacted. That federal law placed certain obligations on the USBR. One such obligation required the USBR to, *within one year* "develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility." This phrase is a federal mandate for the USBR to meet not only the Vernalis salinity standard, but also the three interior southern Delta salinity standards. The EIS ignores this obligation, does not mention the common violations of the standards or propose how the USBR will operate (in conjunction with DWR) to meet those standards. Other water quality standards for fish and wildlife are also regularly violated by the USBR and DWR, and PL 108-361 makes their compliance a federal mandate too. However, the EIS simply states that the Alternatives include "continued long-term operation of the CVP and SWP in accordance with ongoing management policies, criteria and regulations, including water right licenses (sic) issued by the SWRCB. . ." Such a statement is incorrect and the EIS is deficient in not addressing legal obligations of USBR and DWR. The public has no way to evaluate the impacts of the project on surface water quality.

It is also noteworthy that PL 108-361 also mandates the USBR to install the permanent operable barriers in the southern Delta (a method of partially mitigating Project impacts on water levels and quality) no later than September 30, 2007. However, the 2009 BO directs that no such barrier project shall go forward. It is incumbent on USBR to address this NMFS directive which is in contravention of the federal law. Further, PL 108-361 mandates that the USBR find ways to decrease the use of New Melones for such compliance purposes; another federal mandate ignored by the EIS and the USBR.

C. WATER RESOURCES AND WATER SUPPLY CHAPTER 5.

The EIS' analysis of the effects on surface water and water supplies is inadequate. In the past three years DWR and USBR have petitioned for and received at least 12 temporary changes to their various water right permits (see for example attached Temporary Urgency Change Order). These changes have allowed relaxation of numerous water quality standards for which the Projects are responsible. The changes were sought (and authorized) not just during the second and third year of a drought, but also within the first six months of the drought. This means that the Projects are not being operated to meet permit conditions; which conditions are to protect water quality objectives for the protection of beneficial uses, including fish and wildlife and agriculture. If the Projects cannot meet their basic, minimum obligations, any analysis on the effects of the project that do not take this into account is illusory. The EIS assumes that current operations under the 2008 and 2009 BO's is in compliance with state and federal statutory and regulatory requirements. Given the recent history of the Projects regularly securing relaxation of their obligations, it is improper to assume such compliance in the EIS. When the EIS notes decreased flows or decreased exports, those numbers are meaningless if in actuality USBR and DWR secure permit changes to not meet standards and to continue to export water. The models used for the EIS' analysis assume the operations by the Projects will result in compliance with permit terms and conditions. Thus the analysis contained in the EIS assumes that compliance will occur and then identifies impacts. If compliance is not occurring, then the actual impacts cannot be identified.

The EIS lists various increases and decreases in storage, flows and exports, but these do not inform the public of just how the project will effect the environment because the analysis is of some imaginary set of conditions and operations. For example, when the EIS makes conclusions about impacts to O&M Flows in dry or critical years, it ignores the fact that the fishery agencies agreed to changes of such flows during the drought. Similarly, when the EIS notes changes in Delta outflow resulting from the project, it ignores the SWRCB's multiple changes to outflow standards during the drought. There is no way to evaluate the impacts when the base case (USBR and DWR operations) is not what the EIS describes.

As in the comments to Water Quality, the EIS makes no attempt to identify what impacts result from climate change assumptions and what results from the project. When the BO's mandate increased flows, increased Delta outflow, and decreased exports one would expect that this would change reservoir carryover storage which affects the amounts of water available for downstream uses including fish and wildlife needs. However the EIS turns a blind eye to reality and does not even attempt to describe how such changes might affect the ability of the Projects to meet their various obligations in the short or long term. Rather the EIS simply assumes everything works out and the only impacts are worse water quality and less supply sometimes for some interests. The past three years have shown that even after a short term drought the Projects cannot make south of Delta deliveries, cannot meet cold water needs, cannot meet Delta outflow and cannot meet salinity requirements. The whole purpose of the EIS is to inform the public of

how the BO mandated operations will affect the rest of us. It does not. Instead it simply calculates changes via models as if no one or no reservoir ever runs out of water. This complete failure to do a meaningful analysis makes the EIS deficient.

The EIS indicates that Shasta storage changes under various year types, including mostly increases during some months and decreases in others (page 5-75). As above, this analysis does not inform the public of how the decreases and increases offset each other and thus we cannot tell if the net impact is positive or negative or how it affects future supplies for all needs. The EIS even shows under some Alternatives that storage increases in all year types in many reservoirs. It would seem impossible to mandate higher flows and end up with more storage.

The EIS notes that river flows (especially on the San Joaquin River) decrease in certain months (page 5-086) but tells us nothing about how such decreased flow will affect downstream users. This past year the SWRCB curtailed certain water right holders due to low flows. If the project might exacerbate this, the EIS must analyze it. Similarly, the amount of flow entering the southern Delta from the San Joaquin affects the efficiency of the temporary barrier project. The EIS makes no mention of these barriers or how the changes in flows (or water quality) might affect the operation of the barriers or impact those dependent on them. The temporary barrier project is a mandated obligation of DWR and USBR pursuant to the CDO discussed above and a necessary aspect of the settlement to a lawsuit filed by SDWA against the USBR.

The EIS also describes differences in carryover storage in New Melones. However, the changes in carryover are provided only in elevation/feet. This gives the public no ability to determine how much less water is in storage or how the decrease may affect future year's supplies. As we have seen, New Melones like other reservoirs has dropped to critically low levels during the drought. Does the project make such critical low levels more likely or more extreme? The EIS gives the public no useful information in regard to this.

Similar problems with the EIS are in the portions dealing with carryover storage in San Luis Reservoir (filled by exports) (see page 5-88 for example). Showing monthly changes in elevation does not indicate any net change in storage in acre feet. How does a 20 feet drop from elevation 523 feet compare with a 46 foot drop from elevation 422? How do these drops affect total year-end storage?

On page 5-91 the EIS tells us that Delta outflow "would be similar or increase" up to 3,114 cfs. Given that Delta outflow mandates have been temporarily changed 10 or more times in the past three years, what is the basis for the EIS to conclude that in dry years outflow will go up? Will the BO mandated new flows somehow result in more water in each succeeding dry year? DO the 2008 and 2009 result in more water?

The EIS also notes the changes in south of Delta exports, describing amounts by which SWP and CVP deliveries decrease (see for example page 5-93). In recent drought years CVP deliveries to south of Delta agriculture have been zero. How does the EIS conclude that deliveries in dry and critical years go down by 14 TAF or 39 TAF, respectively? How can zero deliveries be reduced by thousands of acre feet? The point being that the EIS again ignores actual operations and thus evaluates fanciful conditions and produces meaningless information.

D. OTHER LEGAL MANDATES

The EIS fails to mention that the Legislation authorizing the Coordinated Operations (PL 99-546) requires the USBR, in conjunction with DWR to meet any adopted water quality standards unless it is determined that the compliance is not consistent with congressional directives applicable to the CVP. Since the USBR has made no such determination of inconsistency, the USBR must meet its obligations; including meeting the Vernalis and southern Delta salinity standards. The USBR did not do so for much of this year and last. Thus the EIS assumptions are unsupportable.

The EIS fails to mention that one of the purposes of the CVP and SWP is repulsion of salinity. Thus USBR's failure to meet Delta outflow requirements including X2 are contrary to its federally mandated directives.

State law applying to the Projects requires them to not only provide such salinity control, but also to provide water quality and supply to in-Delta interests prior to exporting any water. The EIS is deficient in not examining Project operations which include such limitations on exports.

E. FAILURE TO USE AVAILABLE INFORMATION

Attached hereto are excerpts from both the EIS and the BO's which highlight the failure of USBR to develop information by the deadlines specified in the BO's. This failure resulted in the USBR having insufficient information to conduct a meaningful evaluation in the EIS. Additional excerpts indicate that the EIS fails to adequately evaluate increased fish screening as a meaningful alternative to increased habitat.

SDWA hereby adopts and includes by reference those comments submitted by the Central Delta Water Agency.

Please call me if you have any questions or comments.

Very truly yours,


JOHN HERRICK

Attachments